

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
COMMENT SOUGHT ON	)	WT Docket No. 16-421
STREAMLINING DEPLOYMENT OF SMALL	)	
CELL INFRASTRUCTURE BY IMPROVING	)	
WIRELESS FACILITIES SITING POLICIES	)	
MOBILITIE, LLC PETITION FOR	)	
DECLARATORY RULING	)	

**COMMENTS OF THE FLORIDA COALITION OF LOCAL GOVERNMENTS IN  
RESPONSE TO FCC PUBLIC NOTICE DA-16-1427**

Submitted on behalf of a coalition of Florida local governments comprised of the following:

City of Coral Gables  
City of Coral Springs  
City of Gainesville  
Town of Gulf Stream  
Town of Pembroke Park  
City of Tallahassee  
City of Tampa  
City of Winter Haven  
Florida Association of Counties, Inc.  
Florida League of Cities, Inc.

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Dated: March 8, 2017

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**PUBLIC NOTICE DA-16-1427**

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These local governments represent the diversity of Florida both from a regional perspective covering all geographic areas of the State, urban and rural areas, and from a population perspective addressing the interests of very small residential communities to among the largest urban areas within the State. In addition to specific local governments, these comments are submitted on behalf of the Florida League of Cities, Inc. (“FLC”)<sup>1</sup> and the Florida Association of Counties, Inc. (“FAC”).<sup>2</sup> Since 1922, FLC has been representing Florida’s municipalities and now represents virtually all of Florida’s over 410 municipalities. For more than 80 years, FAC has represented the diverse interests of Florida’s counties and represents all 67 counties within the State. This coalition of municipalities, FLC and FAC (“Florida Coalition”) is representative of the interests of Florida local governments throughout the State.

As an initial matter, the Florida Coalition felt it was important to respond to the Public Notice for several reasons. First, many Florida local governments have been contacted by Mobilitie, LLC (“Mobilitie”) seeking to install “poles” of varying heights in numerous areas of locally controlled rights of way. Mobilitie’s submittals and communications have created a great deal of confusion as its submittals are often under different names, do not describe in accurate or complete terms what it is trying to accomplish, often uses terms to describe proposed facilities that are not consistent with construction plans, and reference portions of Florida Statutes and local codes that may not be accurate.

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<sup>1</sup> [www.flcities.com](http://www.flcities.com).

<sup>2</sup> [www.fl-counties.com](http://www.fl-counties.com).

Secondly, and more importantly, the Florida Coalition is concerned that based on language in the Public Notice, including the numerous references to Mobilitie's Petition, the Commission may be considering preempting state and/or local law regulating access to the rights of way for communications facilities. In Florida, local governments are not able to negotiate and to enter into agreements with communications providers for access to the rights of way. Their only authority to address land use, public safety, environmental, and other valid concerns is through their codes. Thus, if the Commission preempts or regulates local governments' authority under their codes, there may be no method for Florida's local governments to address vital interests that courts, interpreting federal and Florida law, have determined are lawful areas for Florida local governments to regulate.

The framework for analysis of these Comments is as follows:

1. An introduction addressing the status of wireless siting and competition in Florida.
2. Discussion of law applicable to siting facilities in Florida, with emphasis on Florida law for placing and installing wireless facilities in the rights of way. This further includes the Florida Department of Transportation's position for use of its rights of way. This section addresses not only current Florida law, but also pending State legislation.
3. Because the Commission issued the Public Notice in part because of Mobilitie's Petition and references many assertions by Mobilitie, there is a section devoted to Mobilitie's actions in Florida.
4. The final section provides an in-depth factual discussion of the status of several specific Florida governments with respect to wireless siting generally and their experiences with Mobilitie. This includes as attachments the various submissions, responses and plans for facilities Mobilitie has proposed to install in the rights of way.

Throughout these sections, the Comments address several specific questions the Commission asked in the Public Notice.

## **I. Introduction**

In the Public Notice, the FCC raised a number of issues pertaining to potential Commission action to expedite the deployment of next generation wireless infrastructure by providing guidance on how federal law applies to local government review of applications and authority over siting wireless facilities public rights of way. In particular, the Public Notice seeks comments on ways in which the Commission could promote wireless infrastructure deployment by issuing a declaratory ruling, including but not limited to those suggested in a Petition for Declaratory Ruling filed by Mobilitie.

As an initial matter, the Florida Coalition submits that siting wireless infrastructure in Florida has and is working very well. Wireless services have been deployed effectively and efficiently throughout the State. Local governments generally process applications for wireless facilities in an efficient and expeditious manner not only for the benefit of their residents, visitors, and businesses but also for their own benefit as wireless services are important for local governments' own communications needs. The Florida Coalition commends the FCC for recently commissioning a Report by the FCC's Intergovernmental Advisory Committee ("IAC")

to examine the status of wireless facilities siting.<sup>3</sup> As the IAC recognized, siting wireless facilities has been very effective nationwide, and the same holds true with respect to Florida.

The reason why wireless services and infrastructure has expanded so rapidly in Florida is because local governments enjoy broad home rule authority to adopt appropriate land use regulations and to make siting decisions that work best for their communities and the applicants. Most local codes afford government staff sufficient ability to work with communications providers and infrastructure companies in a way that serves the industries' needs and addresses local land use, public safety and other concerns within their authority. This is particularly important with respect to installing communications facilities in the rights of way, since Florida local governments are precluded from requiring agreements for the installation of facilities in the rights of way. If the FCC preempts or further regulates such local authority, the Florida Coalition submits that the FCC would not be in a position to address nuances of different States' laws to satisfy these concerns. Such FCC action, taken with the best of intention to spur advances in communications, would actually have the opposite impact and harm both the provider and infrastructure industries, local governments, residents and businesses.<sup>4</sup> Accordingly, from the perspective of the Florida Coalition, the FCC should forbear from adopting additional regulations on siting wireless facilities.<sup>5</sup>

#### **A. Competition In These Industries**

It must be emphasized that both the wireless communications services industry and the wireless infrastructure real estate industry are extremely competitive in Florida. While there has been significant consolidation in the service provider industry, there are still four nationwide wireless service providers and a multitude of smaller carriers serving Florida as well as numerous WiFi providers competing for customers. Wireless communications providers compete aggressively with wireline broadband and communications providers, many of whom have announced plans to provide wireless service.<sup>6</sup> Further, consumers often use less expensive WiFi service, particular in their homes or at work where they already subscribe to broadband, and in the millions of locations offering free WiFi instead of using their more expensive wireless data service. While consumer demand for wireless services are growing, as the Wireless Bureau recently stated, there are many substitutes available to consumers to satisfy their communications needs.<sup>7</sup> It would be useful if the Commission studied the various substitutes available now and likely to be available in the future and determined whether such substitute services may serve to offer advanced services and accomplish the goals the Commission is seeking to achieve.<sup>8</sup>

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<sup>3</sup> Report on Siting Wireless Communications Facilities by the FCC Intergovernmental Advisory Committee, Presented to the Commission July 12, 2016 ("IAC Report"). <https://transition.fcc.gov/statelocal/IAC-Report-Wireless-Tower-siting.pdf>.

<sup>4</sup> The IAC Report similarly emphasized the importance of local determination, *Id* at 3

<sup>5</sup> The IAC Report addressed existing federal law and FCC regulations and concluded that evidence did "not support a claim for further federal, or state, restrictions of local authority..." *Id*.

<sup>6</sup> As the Commission has recognized, many consumers have dropped traditional landline wireline communications service to obtain service via WiFi using their broadband service or via a wireless provider.

<sup>7</sup> Annual Report and Analysis of Competitive Market Conditions with Respect to Mobile Wireless, Including Commercial Mobile Services, 19<sup>th</sup> Annual Report, WT Docket No. 16-137, Released September 23, 2016 ("Competition Report").

<sup>8</sup> For example, in the Competition Report, the Wireless Bureau indicated that it does not evaluate the competitive effect of WiFi, and similarly, the IAC Report did not take into consideration the process for approving WiFi

The service provider industry is not the only competitive industry. The wireless infrastructure industry has become extremely competitive, particularly in Florida. The Wireless Infrastructure Association (WIA) now boasts well over 100 members, from some of the largest publicly traded infrastructure real estate companies to smaller independent companies that install manage and lease infrastructure, and there are many other infrastructure entities that are not members of WIA, such as Mobilitie.<sup>9</sup> Florida has been a very fertile breeding ground for business for this industry, with many members having a significant presence in Florida.<sup>10</sup> These infrastructure companies compete aggressively. As real estate companies, for the most part, they are not in the business of selling communications services. Rather, they derive revenues from leasing and managing infrastructure: towers, Distributed Antenna Systems (“DAS”), small cells, fiber and antennas. The Commission is undoubtedly aware of the tremendous competition that is occurring now in these industries.<sup>11</sup>

**B. Important Policy Concerns For Competitive Service Provider and Infrastructure Real Estate Industries.**

There are several important policy matters that are implicated as a result of such fierce competition, including but not limited to the following considerations.

- Do Not Pick Winners and Losers.

The Commission, and federal, state and local law more generally, must be careful not to pick winners and losers through regulation. Making it easier, faster or less costly for a particular technology, competitor, or type of infrastructure to be deployed will create significant competitive advantages and harm viable competitors. Such Commission regulation will also encourage certain technologies while discouraging innovation and advances in technology. For example, many of the small cell sites Mobilitie seeks to install are 80’ or 120’ tall and others need to be accompanied by very large equipment facilities of approximately 30 cubic feet, even though they may provide wireless data coverage for only a block or less. It would seem that there are better technologies available now, or that could be developed that would provide greater coverage and be less impactful. If the Commission encourages particular technologies, it will remove incentives to develop better technology.<sup>12</sup> Local regulations may actually incentivize advances in technology. For example, local governments that require collocation if possible before a new tower can be constructed, have encouraged the industry to adopt better methods to collocate more facilities on existing towers and structures and have led to safer tower practices and more efficient use of infrastructure resources.<sup>13</sup> Both federal and Florida law encourage

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facilities. Yet, millions of persons, both residents and visitors, as well as businesses rely on WiFi service as more available, less expensive substitutes for wireless carrier data services.

<sup>9</sup> <http://wia.org/members/>.

<sup>10</sup> The following infrastructure companies are among those that have a presence throughout FL as well as a corporate or regional headquarters in Florida: Crown Castle (Orlando), SBA (Boca Raton), RG Towers (Boca Raton), Vertical Bridge (Boca Raton), Vertex Development (Tampa).

<sup>11</sup> The FCC’s Wireless Bureau has been evaluating these industries for at least 19 years for the Mobile Wireless Competition Report and other reports. [https://apps.fcc.gov/edocs\\_public/attachmatch/DA-16-1061A1\\_Rcd.pdf](https://apps.fcc.gov/edocs_public/attachmatch/DA-16-1061A1_Rcd.pdf).

<sup>12</sup> The IAC Report noted the importance of federal policy encouraging advances in technology and not hindering such advancements. IAC Report, at 18-19.

<sup>13</sup> Many local codes do contain this requirement.

collocation, but do not mandate that the industry demonstrates efforts to attempt collocation before installing new towers. The Florida Coalition submits that this would be an appropriate consideration for possible Commission regulation, particularly if substantial use of the rights of way is foreseen for such facilities.

At a recent FLC conference, an engineer for Verizon gave a very useful presentation as to the type of small cell and DAS facilities Verizon was looking to install in rights of way and why such facilities were needed.<sup>14</sup> As explained, such facilities were to address very localized existing capacity or coverage issues in particular buildings, streets or neighborhoods. In addition, both Verizon and AT&T's representatives made it clear that unlike Mobilitie, they were seeking to collocate such small cell and DAS facilities on existing structures, either on private or public property or in the rights of way, rather than install new towers to support such facilities. Further, Verizon's and AT&T's small cell and DAS facilities would be connected via fiber that was largely already in place, as opposed to Mobilitie's small cell facilities that require line of sight wireless capabilities, and thus numerous and some very tall towers. Unless there are other reasons beyond the scope of these Comments, it would seem that technology that allowed for collocation and relied on existing fiber as opposed to new towers, should be encouraged by federal, state and local policies. In any event, if the Commission adopts regulations that favor one particular technology over others, it may easily create advantages and disadvantages for various industry members.

- **Marketplace Motives Are Not A Valid Basis To Preempt Appropriate Regulation.**

As highly competitive industries, the members are constantly looking at ways to bring their products and services to market in the quickest and least costly manner possible – and certainly cheaper and faster than their competitors. The Florida Coalition submits that many issues raised with state and local regulation are often based on such highly competitive motives and are not truly justified under principles of federal or state law. Mobilitie is a prime example of this. As discussed in further detail below, Mobilitie has indicated to many local governments it is seeking access to rights of way solely because it believed it would be quicker and cheaper than locating facilities on private property. Federal law and Commission authority was not intended to require that state and local government regulation assures that businesses have the cheapest and quickest means possible to offer services. Rather, federal law, as discussed in detail in the Public Notice, was designed to ensure that state and local regulations do not prohibit or unreasonably delay the provision of such services.

- **Appropriate Regulations Protect Vital Interests That Support These Industries.**

In such competitive industries, appropriate state and local regulation is vital to ensure that important interests are protected, which ultimately supports the viability of the industries. If a tower company installs a tower in rights of way without sufficient regard to safety of the traveling public and persons are injured or killed, no cost cutting or regulatory preemption will save that company. Similarly, if infrastructure companies and others are basically given unilateral authority to install facilities anywhere they want in the rights of way, as may be the case under some proposed State legislation, the capital investment and value of such companies may easily become worthless. What would happen to the value of a \$100,000 pole installed by

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<sup>14</sup> "Understanding Communications Infrastructure Challenges," FLC Annual Conference, Orlando, December 8, 2016.

Crown Castle in the rights of way, if five of its competitors, utilities and governments were to install similar poles within a few feet that could also be used for the same carriers' facilities at much lower rent. At some point, without separation and other land use requirements, the industry will devour itself. Appropriate local and state regulations that protect important land use interests are necessary to maintain viable provider and infrastructure industries.

Finally, as the Commission noted in the Public Notice, the wireless infrastructure and wireless provider industries are deploying and planning to deploy large numbers of small cells and DAS throughout the nation. Florida is no exception. Many wireless communications providers and infrastructure real estate entities are currently engaged in discussions with local governments and have already deployed small cell and DAS facilities with limited range throughout local governments, on private property, public property and in rights of way. These Comments will address the Florida local governments' experience with respect to such small cell and DAS deployments and plans with respect to supporting such deployments in the future. Again, this success of such deployments depends entirely on local governments retaining authority to manage appropriately rights of way. Because of Florida's unique law with respect to local control over rights of way particularly for communications facilities, the Commission must be very cautious about interfering with local authority. There could be unintended consequences that would be harmful to the communications and infrastructure industries as a result of inappropriate Commission action.

### **III. Local Control Of Rights Of Way in Florida**

Just as local regulation is necessary to ensure fair competition, the tremendous success in siting wireless facilities around the country generally, and in Florida more particularly, is a direct result of local control that currently exists with respect to such infrastructure. Local regulations in Florida did not come about in a vacuum. Rather, most localities adopted land use codes to implement Florida statutes after considering input from the affected industries and others. For the most part, local governments in Florida have approved siting applications as long as there did not exist a land use reason to deny such application. Florida adopted a comprehensive statute, with input from both the industry and local governments, with respect to processing applications and regulating wireless facilities. Further, Florida law is unique with respect to local governments' control of rights of way for communications providers. Any action by the Commission that would regulate such issues, must take into consideration Florida law.

#### **A. Federal Law**

Florida law is subject to federal law and was adopted to implement portions of federal communications law. In the Public Notice, the Commission discussed the various federal statutes and Commission regulations that form the regulatory framework for state and local government authority with respect to siting wireless facilities. As the Commission noted, federal statutory provisions under Sections 253 and 332 of the Communications Act as well as Sections 6409 of the Spectrum Act explicitly preserve state and local governments' authority to control the "placement, construction, and modification of personal wireless service facilities" and to manage "use of public rights of way," but prohibit state and local governments from using certain unreasonable criteria in making such decisions.<sup>15</sup> The Commission further noted:

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<sup>15</sup> Public Notice at 5, citing 47 U.S.C. § 332(c) (7) (A) and 47 U.S.C. § 253(c).

Both Sections 332 and 253 prohibits state and local government actions that ‘prohibit or have the effect of prohibiting’ any entity’s ability to provide personal wireless service or any other telecommunications service or that “unreasonably discriminate among providers of functionally equivalent services.” Section 253 expressly provides that state or local governments may require telecommunications providers to pay “compensation” for the use of public rights-of-way, but specifies that the amounts of such compensation must be “fair and reasonable,” “competitively neutral and nondiscriminatory,” and “publicly disclosed.” Section 253 also authorizes the Commission to issue orders that “preempt the enforcement” of state or local statutes, regulations, or legal requirements that preclude any entity from providing telecommunications service.<sup>16</sup>

A possible federal issue not addressed in the Public Notice is whether Section 253 would support a local requirement prohibiting wireless facilities in the rights of way where all utilities, must be placed underground. During debate on the bill in 1996, Senator Feinstein in her comments offered specific examples of the types of local government restrictions that Congress intended to permit under the exceptions set forth in subsection 253(c), including:

- (4) Require a company to place its facilities underground, rather than overhead, consistent with the requirements imposed on other utility companies.

141 CONG. REC. S8172 (daily ed. June 12, 1995) (statement of Sen. Feinstein, quoting letter from the Office of City Attorney, City, and County of San Francisco). Obviously, if Section 253 would allow local governments to mandate that all communications facilities and other utilities should be installed underground, such statute would not require local governments to allow towers to be installed in the rights of way. It may be useful for the FCC to weigh in on whether local governments could prohibit such facilities where all utilities are underground consistent with Section 253. This would have significant practical implications, as Mobilitie has applied to install “utility poles” in areas of the rights of way where local codes mandate that all utilities are installed underground and where in fact, there are no above-ground utilities.

## **B. FCC Regulations**

The FCC has adopted a number of regulations to implement and to clarify various aspects of federal statutes. Most notably, the FCC adopted “shot clocks” of 90 days for local action on collocation and 150 days for new tower and other applications as presumptively reasonable time frames under federal law. The Commission further stated that the same “shot clocks” apply to DAS and small cell applications.<sup>17</sup> In the Public Notice, the FCC asked whether it should adopt a different “shot clock” for applications for small cell and DAS facilities in rights of way.

There is substantial concern by the Florida Coalition with FCC shot clock. Prior to the FCC adopting a shot clock, Florida adopted a shot clock for new facilities and collocations,<sup>18</sup> although there are substantial differences between the Florida and FCC shot clocks. It is the

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<sup>16</sup> *Id.*, at 5, citing various provisions of the Communications Act.

<sup>17</sup> Public Notice, at 11.

<sup>18</sup> Section 365.172(13)(d), Florida Statutes.



Florida Coalition’s understanding that no local government in Florida has been sued for violation of either the FCC’s or Florida’s “shot clock.” Further, we are unaware of a tower actually being installed by an applicant under the “deemed granted” remedy of Florida’s shot clock. Rather, even if the Florida “shot clock” expired, an applicant will seek an appropriate permit, undergo inspections and install its facility with appropriate approval. In addition, the FCC does not have information as to whether there has been litigation under its shot clock.<sup>19</sup> Accordingly, it does not appear that shot clocks have had much impact on expediting siting of such facilities.

In practice, “shot clocks” actually often work to the disadvantage of local governments and industry members. For a “shot clock” to be effective both local governments and industries should be subject to time frames; it should work both ways. In other words, currently “shot clocks” as set up by the Commission and under Florida law mandate a timeframe by which local governments must review applications for completeness, notify applicants of incompleteness and issue final determinations. However, they do not prohibit applicants from submitting modifications or supplements to applications after a completed application has been submitted or provide that a “shot clock” starts again if an applicant submits a substantial modification.

As a result, often the following occurs in the case of an application that does not meet a local government’s code requirements, even in the case of a complete application. Staff will indicate in a staff report prior to a final determination that there is an issue of compliance with the land use code pertaining to the application. By way of example, the proposed facility may exceed the height limit in the zoning district, may not meet setback requirements, or may not satisfy environmental requirements. There may be numerous compliance issues so identified. Of course, the local government staff will want to give the applicant time to address the issues, but the “shot clock” may prevent this since determinations must meet the deadline for final action. The applicant will then address the issues of non-compliance often submitting hundreds of new pages, detailed plans and engineering reports, a short time before the hearing, occasionally even on the day of or at the hearing. Staff of course would not have time to review the new materials, yet the applicant’s submission does not toll or restart the shot clock. Thus, staff recommends denial because of the noncompliance and insufficient time to review new materials. In such circumstances, the applicant will typically agree to waive the shot clock rather than face a denial recommendation. While local codes may not require postponing final determinations, most local governments typically agree to such postponements to accommodate applicants. This process can occur many times, particularly with applications that involve significant technical, public safety, and sensitive environmental issues. Thus, “shot clocks” as currently enacted by the FCC do not work as intended, and often serve to harm both local governments processing applications and applicants. It would be a much more efficient process if when staff identified potential issues of non-compliance, the applicant and staff had sufficient time to work through the issues, without an arbitrarily imposed deadline looming.

The Florida Coalition submits that it would be a bad idea for the FCC to create a new “shot clock” for small cell and DAS applications. First of all, there would be too many “shot clocks” and both the industry and local governments would be confused as to which shot clock applied to what application. For example, an application to install a 75’ tower in the rights of way, similar to Mobilitie’s poles, which may not qualify as a “small cell” under a local code, an

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<sup>19</sup> IAC Report, at 16.

antenna or DAS on such tower, another tower at a lower height, and antennas on existing utility poles, may implicate be 3 (or 4 in Florida's case) different shot clocks.<sup>20</sup>

Further, it may be impossible for staff to review applications for completeness in very short time frames, such as ten days, particularly for small governments with minimal staff. Applicants and local governments may be facing the same scenario described above, with staff issuing reports recommending denial of the application, and applicants rushing to submit supplemental materials to address such issues.

Arbitrary time deadlines are particularly problematic if they apply when an applicant is seeking to collocate facilities on traffic, light or utility poles owned by the local government. Such applications raise many issues other than just siting concerns, including but not limited to whether such poles can accommodate the proposed facility, and if not, would the poles need to be replaced or what make-ready work would be required. Further, if such poles were purchased and installed with grants or financing that restricts their use, it may violate such financing conditions to allow wireless facilities to collocate on such poles.<sup>21</sup> In addition, such poles may be installed on portions of the rights of way where it would violate the conditions creating the rights of way to allow private, commercial facilities to be located.

These issues do not even begin to address how local governments and applicants should address batch applications. Because the industries' and local governments' experience with small cell and DAS installations in the rights of way is fairly new, or non-existent in many locations, it would make sense to see how this process moves forward, without preemption or regulations on timing and procedures. Many industry members – both service providers and infrastructure companies, and local governments have not had an opportunity to develop appropriate practices. What works for AT&T or Verizon may not work for Crown Castle or Mobilitie, and what works for NYC, certainly will not work for Coral Gables. The Florida Coalition would urge the FCC to forbear from adopting a new “shot clock” or other procedural regulations that apply to applications to site facilities in the rights of way.

### **C. Florida Law**

The Commission could not analyze every States' laws with respect to local authority over rights of way and local processing of applications, as there are significant differences in every State. Largely in response to Mobilitie's demands to install “poles” in the rights of way, the Florida Association of County Attorneys (“FACA”), created a cell tower rights of way task force in June 2016. This task force analyzed federal and Florida law to determine if Florida local governments were compelled to allow private entities to place towers in the rights of way. It received input from and examined the industries' and Florida Department of Transportation's (“FDOT”) positions. FACA's final report, issued January 2017, contains a comprehensive

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<sup>20</sup> The FCC did not discuss why small cell and DAS facilities in the rights of way may warrant different time frames. Such facilities may include towers well over 100' tall and equipment facilities that are 30 cubic feet or more. Locating such facilities in the rights of way may require more analysis of concerns with utilities and the travelling public and the impact to adjacent property than installing such facilities on private property.

<sup>21</sup> Many local governments in Florida have obtained grants or financing through state or federal transportation programs for traffic signal poles and light poles. Such grant programs typically restrict the use of such poles to transportation related uses.

analysis of federal and Florida law.<sup>22</sup> FACA's discussion of federal law is consistent with the analysis in the Public Notice. These Comments include much of FACA's discussion.

### **1. Proprietary Versus Regulatory Authority**

One issue that may be important for the Commission to address that was discussed by FACA, but not in the Public Notice, is the distinction between local governments exercising authority through proprietary capacity as property owners versus regulatory authority. If through proprietary authority as owners of such property, case law indicates that the 96 Act and other federal restrictions on local regulation of wireless facilities do not apply.<sup>23</sup> Similarly, Florida law addressing local regulation of wireless facilities would not apply. The FCC has no authority to regulate local action with respect to government-owned buildings, parks and other government-owned property. The FCC did not address whether federal law and FCC authority would be impacted if local governments are acting under their proprietary versus regulatory authority as to siting in the rights of way. As discussed below, FDOT's position is that it owns its rights of ways, and thus, is not subject to federal law for wireless facilities.

This determination may be more a matter of State law beyond the scope of the FCC's expertise and statutory authority. Indeed it may depend on the type of property interest enjoyed by local governments over specific areas of the rights of way, which could vary from location to location. In some cases, a local government may acquire rights of way property in fee. However, the more common method in Florida is for local governments to gain control of rights of way through dedication on plats by private property owners. These dedications are in the nature of easements that authorize use of the rights of way by the local government for public purposes, such as for public access and utilities.<sup>24</sup> The Florida Attorney General has issued various opinions concerning local authority over dedicated rights of way.

A dedication is simply the donating or appropriating of one's own land for use by the public. That is, the owner of the dedicated property is precluded from using it in any way inconsistent with the public's use thereof.... [T]he legal title to the property remains in the grantor... while the public takes the beneficial use of the property.... [T]he fee remains in the grantor ... while the public acquires only a right of easement in trust, so long as the dedicated land is used for the intended purpose of the dedication.<sup>25</sup>

Moreover, governments cannot abandon rights of way if being used by the public and utilities.<sup>26</sup>

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<sup>22</sup> FACA's January 2017 Final Report, [http://faca.fl-counties.com/sites/default/files/2017-01/1.6.17\\_FINAL%20Report%20of%20the%20FACA%20Cell%20Tower%20ROW%20Task%20Force%201.6.17%20revised\\_0.pdf](http://faca.fl-counties.com/sites/default/files/2017-01/1.6.17_FINAL%20Report%20of%20the%20FACA%20Cell%20Tower%20ROW%20Task%20Force%201.6.17%20revised_0.pdf)

<sup>23</sup> FACA Report, at 3, citing *Sprint Spectrum L.P. v. Mills*, 283 F.3<sup>rd</sup> 404 (2d Cir 2002) and *Omnipoint Communications, Inc. v. City of Huntington Beach*, 738 F.3d 192 (9<sup>th</sup> Cir. 2013).

<sup>24</sup> A right-of-way, generally, is the right of a specific person or class of persons to use a route to travel over the land of another; Section 704.01, Florida Statute provides: "The owner or tenant thereof, or anyone in their behalf, lawfully may use and maintain an easement for persons, vehicles, stock, franchised cable television service, and any utility service, including, but not limited to, water, wastewater, reclaimed water, natural gas, electricity, and telephone service, over, under, through, and upon the lands...."

<sup>25</sup> Counties, roads and streets, dedication, vacation, FL Attorney General Opinion 78-118 (September 27, 1978).

<sup>26</sup> *Id.*, see also Section 336.09, Florida Statutes, regarding county process to vacate rights of way.

The purpose of pointing out such restrictions on local authority over rights of way is to convey that these are complicated issues involving more than communications policy. If a county or municipality improperly allows use of public rights of way for private purposes, it is quite possible that the dedication could revert. More probably, others may challenge such action for interfering with their authorized use of the rights of way. Many of facilities that Mobilitie and others seek to install in the rights of way are very large – Mobilitie’s proposed poles are often 80’-120’ tall and such small cell and DAS facilities may be accompanied by equipment facilities the size of refrigerators or larger. Such facilities could easily interfere with others’ use of the rights of way, particularly if they can be sited without regard to local regulations. Accordingly, the FCC should proceed very cautiously before preempting local regulations or mandating action for access to rights of way.

## **2. Sections 337.401 and 362.01, Florida Statutes: Rights of Way Authority**

Florida law is very comprehensive with respect to local regulation of communications providers’ use of the rights of way. Section 337.401, Florida Statute (“Section 337.401”) authorizes local governments to allow use of the rights of way for utilities and communications service providers. It also prohibits local governments from requiring agreements with communications providers. It provides, in pertinent part:

(1)(a) The department and local governmental entities, referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “authority,” that have jurisdiction and control of public roads or publicly owned rail corridors are authorized to prescribe and enforce reasonable rules or regulations with reference to the placing and maintaining across, on, or within the right-of-way limits of any road or publicly owned rail corridors under their respective jurisdictions any electric transmission, telephone, telegraph, or other communications services lines; pole lines; poles; railways; ditches; sewers; water, heat, or gas mains; pipelines; fences; gasoline tanks and pumps; or other structures referred to in this section and in ss. 337.402, 337.403, and 337.404 as the “utility.” . . .

(2) The authority may grant to any person who is a resident of this state, or to any corporation which is organized under the laws of this state or licensed to do business within this state, the use of a right-of-way for the utility in accordance with such rules or regulations as the authority may adopt. No utility shall be installed, located, or relocated unless authorized by a written permit issued by the authority...

(3)(a) . . . [I]t is the intent of the Legislature that municipalities and counties treat **providers of communications services in a nondiscriminatory and competitively neutral manner when imposing rules or regulations governing the placement or maintenance of communications facilities in the public roads or rights-of-way.** Rules or regulations imposed by a municipality or county relating to providers of communications services placing or maintaining communications facilities in its roads or rights-of-way must be generally applicable to all providers of communications services and, **notwithstanding any other law, may not require a provider of communications services to apply for or enter into an**

**individual license, franchise, or other agreement** with the municipality or county as a condition of placing or maintaining communications facilities in its roads or rights-of-way. . .

(3)(b) Registration described in paragraph (a) does not establish a right to place or maintain, or priority for the placement or maintenance of, a communications facility in roads or rights-of-way of a municipality or county. Each municipality and county retains the authority to regulate and manage municipal and county roads or rights-of-way in exercising its police power. Any rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county.

Section 337.401 (emphasis added). As set forth in the Statute, FDOT and local governments are authorized to adopt and to enforce reasonable regulations for the placement of facilities in the rights of way. With respect to communications services providers, local governments are entitled to adopt and to enforce competitively neutral regulations governing the placement or maintenance of communications facilities in the rights of way. Local governments cannot require a communications services provider to apply for or enter into any agreement. Rather, they can require a registration and permits to place and to maintain facilities in the rights of way.

Various cases have helped clarify the extent of Florida local regulatory authority with respect to the placement and maintenance of communications facilities in the rights of way. In *BellSouth Telecommunications, Inc. v. Town of Palm Beach*,<sup>27</sup> the court reviewed ordinances from two municipalities to determine which sections were preempted by federal or state law, including Section 337.401(3)(b), Florida Statutes (1998), requiring “[a]ny rules or regulations adopted by a municipality or county which govern the occupation of its roads or rights-of-way by providers of communications services must be related to the placement or maintenance of facilities in such roads or rights-of-way, must be reasonable and nondiscriminatory, and may include only those matters necessary to manage the roads or rights-of-way of the municipality or county.” The court determined that the following regulations are considered necessary for the management of the right-of-way: indemnification; performance bond requirement; security fund requirement; local government power to request information from an operator regarding its future plans concerning the rights of way; housekeeping and administrative regulations; enforcement/fines; local government access to books regarding construction and repair within the right-of-way; requirement to retain and prepare reports regarding facilities within the right-of-way; requirement to maintain maps of all facilities within the right-of-way; and requirement to provide information relating to the physical management of the right-of-way. In contrast, the following regulations were determined by the court to be beyond local authority: local government’s right to request information not relating to the right-of-way; requiring compliance with state and federal anti-discrimination laws; access to books regarding operations.

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<sup>27</sup> 252 F.3d 1169 (11th Cir. 2001).

Local governments, industries, and other courts have accepted generally that Section 337.401 affords local governments the authority to obtain information and to adopt and to enforce regulations regarding the physical use of the rights of way and land use concerns, as well as information for the protection of the local government and its residents. Areas that are beyond such local authority involve generally business operations.

Section 362.01, Florida Statutes addresses specifically traditional telephone companies' authority to use the rights of way for telephone poles and lines. It provides:

Any telegraph or telephone company chartered by this or another state, or any individual operating or desiring to operate a telegraph or telephone line, or lines, in this state, may erect posts, wires and other fixtures for telegraph or telephone purposes on or beside any public road or highway; provided, however, that the same shall not be set so as to obstruct or interfere with the common uses of said roads or highways. Permission to occupy the streets of an incorporated city or town must first be obtained from the city or town council.

Section 362.01, Florida Statutes. This statute does not provide any authority for wireless infrastructure companies or service providers to construct towers or wireless facilities in the rights of way.

### **3. Florida Law Regarding Fees for Use of Rights of Way**

In 2001, Florida replaced taxes and fees communications service providers paid to the State and local governments with a communications services tax ("CST").<sup>28</sup> The CST was not new money, but was designed to replace funding, streamline administration and still provide bondable funding for the State and local governments. There are State and local portions of the CST, which must be separately listed on consumers' bills. The CST applies to telephone, cable, satellite service (just a State CST), mobile communications services, VoIP, and other such services. Florida Statutes establish the maximum CST, services it applies to, and exemptions.

Prior to the CST, local governments charged franchise fees to communications and cable providers that used the rights of way. The CST replaced such franchise fees. With the creation of the CST, local governments are not allowed to charge communications providers that pay the local CST a fee for use of the rights of way. Similarly permit fees became very restrictive and would not cover the costs to review construction applications. Local governments opted to receive a small increase in the CST of .12 percent in exchange for not charging permit fees for construction in the rights of way.<sup>29</sup> Communications providers that occupy the rights of way but do not provide communications services and thus do not pay CST to such jurisdiction are known as "pass-through" providers.<sup>30</sup> Section 337.401 establishes the maximum annual fee local governments may charge pass-through providers at \$500 per linear mile or portion thereof.<sup>31</sup>

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<sup>28</sup> Chapter 202, Florida Statutes, effective October 1, 2001.

<sup>29</sup> Ironically, if such provider constructed its tower on private property immediately adjacent to the rights of way, the local government would be able to charge permit fees for review and inspections.

<sup>30</sup> Section 337.401(6)(a)(1), Florida Statute: "A 'pass-through provider' is any person who places or maintains a communications facility in the roads or rights-of-way of a municipality or county that levies a tax pursuant to chapter 202 and who does not remit taxes imposed by that municipality or county pursuant to chapter 202."

<sup>31</sup> Sections 337.401(6)(b) and (c)(1), Florida Statutes.

Local governments must notice and hold public hearings on all ordinances to regulate use of rights of way, including adopting the CST and pass through fees, and must send proposed ordinances to the Florida Secretary of State for publication. There is no authority in Florida to negotiate fees for communications providers access to the rights of way, or to charge fees not authorized expressly by statute.

#### **4. Wireless Services and Facilities Are Not Utilities Under Florida Law**

Mobilitie has asserted it is a regulated utility under Florida law and that its “poles” are utility poles. It is clear however, under Florida law, that while Mobilitie may obtain a Competitive Local Exchange Telecommunications (CLEC) or an Alternative Access Vendor (AAV) certificate from the FL Public Service Commission (“PSC”), such certificate does not grant authority to provide wireless communications services or to install its towers in the rights of way. The PSC has no such authority. Section 364.011, Florida Statutes specifically exempts wireless communications, including commercial mobile radio service (“CMRS”) providers, from the PSC’s jurisdiction.<sup>32</sup> CMRS providers are not “telecommunications companies” within the jurisdiction of the PSC and are not entitled to access the rights of way under Florida statutes.<sup>33</sup> Further, it is also abundantly clear that Mobilitie’s “poles” are not utility poles nor telecommunications facilities.<sup>34</sup> Rather, they are “towers” under Florida law.<sup>35</sup> Notwithstanding the clarity of Florida law, Mobilitie has asserted that it is a regulated utility and that it has the right to install its utility poles in the rights of way.<sup>36</sup>

Florida law further provides that local governments’ land development and environmental regulations may require utilities to be constructed underground at such utility owner’s expense. When an electric utility seeks to install new facilities, the Florida Department of Environmental Protection Siting Board determines whether such facilities should be installed above or underground at the utility’s expense, and must consider local land development regulations. Further, the Siting Board must comply with local environmental regulations that require such utilities to be installed underground at the utility’s expense.<sup>37</sup> If utilities in Florida must follow local regulations and be installed underground in certain circumstances, it would not be appropriate to allow towers to be installed in such rights of way. The land use and environmental concerns that apply to above ground utilities would also apply to towers. Local

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<sup>32</sup> See also Section 364.013, Florida Statute, exempting broadband service and voice over Internet protocol from PSC jurisdiction.

<sup>33</sup> Section 364.02(12)(c), Florida Statute.

<sup>34</sup> See Sections 366.02(2) and Section 364.02(13), Florida Statutes, respectively, for definition of electric utility and telecommunications facility.

<sup>35</sup> Section 365.172(3)(bb), Florida Statute, provides: “Tower” means any structure designed primarily to support a wireless provider’s antennae.

<sup>36</sup> The Pennsylvania Public Utility Commission reached a similar conclusion that DAS is not a utility under state or federal law. Pennsylvania Public Utility Commission, Review of Issues Relating to Commission Certificate of Distributed Antennae System Providers in Pennsylvania, Docket No. M-2016-2517831 (issued March 2, 2017).

<sup>37</sup> *Miami-Dade County v. Florida Power & Light Co.*, --- So.3d ---, 41 Fla. L. Weekly D964 (3d DCA 2016)(FL Supreme Court turned down appeal of appellate court decision pursuant to Electric Power Plant Siting Act, finding that State Siting Board should have taken into consideration Miami’s Land Development Regulations and complied with Miami-Dade County’s environmental regulations requiring undergrounding of utility lines).

regulations requiring undergrounding should be respected as a basis to prohibit wireless infrastructure in areas of rights of way where utilities are underground.<sup>38</sup>

## **5. Florida Law Regarding Siting Wireless Communications Facilities**

In 2005, Florida substantially amended its statute addressing local government processing and regulation of wireless communications facilities.<sup>39</sup> Section 365.172(13), Florida Statutes, sets forth very detailed provisions regarding local authority with respect to application and review procedures, and authority to adopt and to enforce land use regulations over collocations and new wireless facilities. The statute does not differentiate between standard antennas and towers that cover large areas, from facilities that provide coverage over small areas, such as small cells and DAS. The definition of “wireless communications facility” is very broad and would include small cell and DAS facilities.<sup>40</sup> Further the definition of “tower” includes the “poles” applied for by Mobilitie and others to support such facilities.<sup>41</sup>

The statute does not reference expressly whether it applies or does not apply to applications to site facilities in the rights of way.<sup>42</sup> The statute does not apply to local governments acting in their proprietary capacity with respect to property they own, as opposed to their regulatory authority over private property.<sup>43</sup> However, to the extent an applicant sought to collocate on government-owned poles in the rights of way or to install facilities in portions of the rights of way that were owned in fee by a government, the statute would not apply.<sup>44</sup>

## **6. FDOT’s Position on Wireless Facilities in State Rights of Way.**

The FACA Report further discussed FDOT’s positions regarding requests to install private DAS and small cell facilities in FDOT rights of way. First, consistent with Florida law, FDOT does not view such facilities as utilities. Second, as the rights of way property owner, FDOT has determined that it has the authority to use its property as it sees fit. When approached by such companies, FDOT’s first concern was safety. The proposals often included tall towers within a short distance of the side of the road and within the “clear zone.” A roadside “clear zone” is an area in a median or on the side of the road, off the pavement that is to be kept clear of fixed objects. For example, Mobilitie submitted rights of way utilization permit applications for

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<sup>38</sup> As discussed in Section IV, *infra*, Mobilitie applied to locate its “utility poles” in several locations where all utilities must be installed underground.

<sup>39</sup> Chapter 2005-171, Laws of Florida.

<sup>40</sup> Section 365.172(3)(gg), F.S., providing: “Wireless communications facility” means any equipment or facility used to provide service and may include, but is not limited to, antennae, towers, equipment enclosures, cabling, antenna brackets, and other such equipment. Placing a wireless communications facility on an existing structure does not cause the existing structure to become a wireless communications facility.

<sup>41</sup> *Supra*, note 34.

<sup>42</sup> The Bill amended Section 365.172, also amended Section 337.401 addressing regulation of rights of way. Thus, many stakeholders involved in the amendment to Section 365.172 believed that it would apply to applications for use of the rights of way for towers and antennas.

<sup>43</sup> Section 365.172(13), Florida Statute provides, in pertinent part: “notwithstanding anything in this section to the contrary, this subsection does not apply to or control a local government’s actions as a property or structure owner in the use of any property or structure owned by such entity for the placement, construction, or modification of wireless communications facilities.”

<sup>44</sup> However, the Statute does reference State ROW: “Any other law to the contrary notwithstanding,... the Department of Transportation shall negotiate, in the name of the state, leases for wireless communications facilities that provide access to property acquired for state rights-of-way.” Section 365.172(13)(f), Florida Statutes.



120' towers within several feet of the edge of pavement. The FDOT Design Standards for roads requires a clear zone of 18 feet from edge of pavement for speed limits up to 45 miles per hour and from 24 to 36 feet for higher speed limits.<sup>45</sup> FDOT indicated that it only allows utilities to access its rights of way to serve a public need, although it may allow commercial communications facilities to be installed under an appropriate agreement.<sup>46</sup>

## **7. Local Governments' Policy Considerations with Towers in Rights of Way and Revisions of Local Codes**

Many local governments share FDOT's positions and concerns. Local governments often have "clear zones" for public safety purposes requiring no fixed objects in certain areas of the rights of way.<sup>47</sup> Local governments' police powers extend to many other issues within their control of the rights of way. In addition to public safety and land use concerns, there are environmental, economic development, property value, aesthetics, costs, encouragement of collocation versus new towers, and other valid concerns.<sup>48</sup> Request to install towers up to 120' tall and large equipment facilities in rights of way, implicate many of these issues. These may be new considerations for many local governments. Nevertheless, many local governments are addressing these issues and considering revisions to local codes and appropriate regulations.<sup>49</sup> These local regulations are being developed with substantial input from the infrastructure real estate and communications provider industries.<sup>50</sup> These efforts by local governments, not only in Florida but around the country, demonstrate that a one-size-fits-all regulation or practice would not be appropriate.<sup>51</sup> For example, an FCC mandated form agreement would not be appropriate for Florida because local governments cannot enter into agreements, unless the FCC preempts Florida Statutes. Local governments are best equipped to address particular concerns with use of rights of way under their control in local codes consistent with State law.

## **8. Pending Legislation Demonstrates that the Commission Should Refrain from Regulation.**

There is a further reason for the Commission to forbear from more regulations. There are pending bills in Florida that would address local processing and regulation of small cell and DAS in the rights of way. Senate Bill 596 and its identical House companion, HB 687, would amend

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<sup>45</sup> FDOT intends to revise its Utility Accommodation Manual to limit wireless facilities in FDOT rights of way.

<sup>46</sup> In 2016, Crown Castle filed an action against FDOT seeking declaratory and injunctive relief, claiming in part, that FDOT violated the Telecommunications Act by requiring a lease agreement. *Crown Castle NG East, LLC v. FDOT*, U.S. Dist. Ct., S. Dist. of Fla., Case No. 9:16-cv-80871. FDOT moved to dismiss for lack of subject matter jurisdiction and sovereign immunity and Crown Castle dismissed its complaint.

<sup>47</sup> This is particularly important in Florida, where roads often border waterways and canals, and clear rights of way are necessary for motorists to pull off the road or to avoid accidents without becoming submerged.

<sup>48</sup> See "Use of Public Rights of Way for Wireless Communications Infrastructure – A Game Changer," Inside Towers, March 5, 2017. <https://insidetowers.com/cell-tower-news-use-public-rights-way-wireless-communications-infrastructure-game-changer/>

<sup>49</sup> Local governments throughout Florida are considering revisions to codes to address requests to install wireless infrastructure in rights of way. Several governments have adopted Ordinances to allow such facilities with appropriate regulations. E.g. City of Sunrise Ordinance, item C17004, adopted February 14, 2017, allowing small cell and DAS facilities up to certain sizes and heights in rights of way under certain conditions. <http://sunrise.novusagenda.com/AgendaPublic//CoverSheet.aspx?ItemID=6314&MeetingID=463>

<sup>50</sup> In Florida, a coalition of infrastructure and provider entities, including T-Mobile, Verizon, Sprint, AT&T, FP&L, Comcast, and Crown Castle are working together to participate with local governments in revising codes.

<sup>51</sup> IAC Report, at 13-15, discussing various approaches across the country to siting facilities in rights of way.

Section 337.401 by creating the Advanced Wireless Infrastructure Deployment Act. Such Act would require that local governments process applications for such facilities within a certain time frame and allow rights of way access in certain circumstances.<sup>52</sup> The Act limits the height and size of facilities that may be allowed, and addresses fees and other regulations. If passed, such law would be effective July 1, 2017. Unless the FCC is considering preempting state law, there may be regulations in place that would apply to such applications. It is premature for the FCC to act, as Florida may enact comprehensive legislation to address access to rights of way for small cell and DAS wireless facilities.

Similar bills have been introduced or adopted in several States around the country. With respect to the legislative processes, often it is possible for local governments, industry and other stakeholders to work together to address all such parties' interests. Section 365.172, governing local regulation of wireless facilities, was the product of industry, local governments and legislators working together. On occasion the communications industries and state and local governments have worked together with respect to FCC matters.<sup>53</sup> However, the FCC's procedures and practices may make it more difficult for significant dialogue to occur. In addition, many local governments do not have the ability or resources to engage in workshops and meetings at the FCC. On the other hand, communications providers and infrastructure real estate companies are very familiar with working with State legislatures.<sup>54</sup> If regulation is going to be adopted that addresses important interests for both these industries and local governments, and not result in court challenges, it is more likely to occur at a legislative level. Further, as demonstrated in these Comments, these issues raise complex, game-changer policy questions that may be best left to new statutes.

### **III. Mobilitie's Practices In Florida Demonstrate That the Commission Should Dismiss its Petition and Not Consider Its Assertions as Credible.**

As discussed in these Comments, siting wireless facilities has not created significant issues or disputes in Florida. Wireless communications providers and wireless infrastructure companies generally have worked well with local governments throughout the State with respect to mutual goals involved in siting wireless infrastructure to support the provision of wireless services. By far, the one anomaly with respect to the positive experience that has occurred generally in Florida is Mobilitie. The discussion infra on specific local governments' experience with Mobilitie provides greater details. However, Mobilitie's Petition should not serve as a basis for potential new Commission regulations. Quite the contrary, the Commission should reject Mobilitie's Petition, based on its conduct not only in Florida but around the country.

#### **A. Mobilitie's Submissions in Florida Have Not Been Accurate or Complete.**

Local governments have to review and make decisions on applications based on established procedures and adopted codes and statutes. Local governments understand that not all permit applicants are sophisticated with experience seeking approvals, and work with

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<sup>52</sup> <https://www.flsenate.gov/Session/Bill/2017/00596> and

<http://www.myfloridahouse.gov/Sections/Bills/billsdetail.aspx?BillId=57682&SessionId=83>.

<sup>53</sup> One example is the work by the FCC IAC with the wireless communications and infrastructure industries to prepare the Wireless Report.

<sup>54</sup> With respect to SB 596, AT&T alone has some 60+ registered lobbyists with the Florida Legislature, Crown Castle, Mobilitie and other industry members also have registered lobbyists.

applicants through the process. This holds true for communications industries, while some are very experienced with local processes, others require guidance staff. Mobilitie has been a disruptive force with respect to local permitting of wireless infrastructure. Mobilitie's submissions are often incomplete, lack basic clarity, such as who is the applicant, what it is seeking to install and where, and Mobilitie rarely fulfills procedural requirements.

As discussed above, it is clear that local governments in Florida are not required under federal or Florida law to allow Mobilitie's poles in the rights of way, notwithstanding Mobilitie's assertions. They are not "utility poles" under Florida law, as Mobilitie claims in its various submissions. Rather they are "towers" under both federal and Florida law. Yet Mobilitie has never applied to install a tower.

Mobilitie's approach in Florida has been to submit permit applications under the guise as a "public utility" regulated and authorized by the PSC often under a different name that creates the impression that it is a regulated public utility seeking to install a utility pole in the rights of way. Many of Mobilitie's permit applications were submitted to local governments under a d/b/a name of "Florida Utility Pole Authority" and submitted to staff who permit utilities, as opposed to land use and planning staff.<sup>55</sup> As far as the Florida Coalition is aware, Mobility has never submitted an application for a cell tower nor referred to its proposed infrastructure as a tower, but only refers to its infrastructure as "poles" or "utility poles."

In addition, often when submitting its proposed plans, Mobilitie submits misleading or inconsistent information. For example, Mobilitie alternates between indicating poles are wood or concrete and submits photo simulations of such poles that are misleading as to their size, often looking shorter than nearby cars, light poles, buildings, and trees, when in actuality, it may be seeking to install poles of approximately 80' or 120' tall.<sup>56</sup>

Further, Mobilitie's submissions rarely constitute "applications" under local codes and procedures. As noted above, before a communications provider can obtain a permit to construct infrastructure in the rights of way, pursuant to Section 337.401, most local governments require such entity to register. All that is required is accurate identity and contact information, an insurance certificate and bond with specified requirements, and, if applicable, the certificate from the PSC to demonstrate that such entity is a communications provider. A communications rights of way registration is the only method through which local governments can obtain information to contact such entity in the event of an emergency, to ensure that rights of way are restored and properly maintained, to ensure that such facilities have not been abandoned, to determine if the applicant will pay the CST or should be assessed the pass-through provider fee, and to ensure that such entity will be responsible in the event of injury to persons or property. While the registration requirements are fairly straightforward and most communications providers rarely have difficulty satisfying them, Mobilitie has had issues completing registrations correctly. Several local governments have rejected Mobilitie's registrations as not compliant.<sup>57</sup>

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<sup>55</sup> See discussion of Coral Gables, *infra*.

<sup>56</sup> In at least one Application, Mobilitie did not list the jurisdiction's correct name. see discussion of Gulf Stream.

<sup>57</sup> *Id.*; see also discussion of Gainesville.

In any event, local governments attempt to process all applications in a professional manner. Mobilitie's actions have taken considerable time and resources of local staff and officials. Further, and more troubling, Mobilitie's permit applications for utility poles, have on occasion been granted by staff who were unaware of the true nature of Mobilitie's proposed "poles" or that Mobilitie (or its d/b/a entity) was not a utility entitled to install a utility pole. In such cases, local governments have had to go through the very unusual process of revoking permits that were granted under false pretenses, even if Mobilitie commenced installation.<sup>58</sup> If the Commission's broad enforcement authority extends to Mobilitie, it would appear appropriate for the Commission to explore Mobilitie's actions in certain local governments.<sup>59</sup> It is imperative that local government action be based on accurate and truthful information, particularly in such important matters as allowing installations in the rights of way.

**B. Mobilitie's Assertions in its Petition Are Not Credible.**

Based on Mobilitie's actions in Florida, it is disturbing that the Commission should see fit to quote Mobilitie's bald assertions in its Petition and appear to treat them as credible. While these Comments cannot address Mobilitie's assertions quoted extensively for other States,<sup>60</sup> the Public Notice also quotes Mobilitie's Petition as to assertions that it claims apply in Florida.

According to Mobilitie, the phenomenon of excessive and unfair fees for use of rights of way "is not confined to a few outlier localities — it exists nationwide. Across the country, Mobilitie is being confronted with multiple fees, often being asked to pay not only up-front fees but also annual recurring fees which escalate by mandatory amounts year after year."<sup>61</sup> We invite comments on whether these assertions are well-founded.<sup>61</sup>

Again, these Comments cannot speak to other States, but certainly with respect to Florida's localities, nothing could be further from the truth. As detailed above, Florida localities do not have discretion to set fees for use of the rights of way. Maximum fees are set by Florida Statute, and if a local jurisdiction seeks to adopt such fees, it must do so by Ordinance following publication and public hearings. In addition, it is impossible for such fees in Florida to escalate year after year, as claimed by Mobilitie. The Florida Statute has not been amended with respect to the maximum rights of way fees that apply since it was adopted in 2001.<sup>62</sup> Local governments in Florida do not have authority to increase such fees without amendment of the Statute. Accordingly, Mobilitie's assertions are not only not "well-founded" they are absolutely incorrect with respect to Florida's 500 or so local governments.

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<sup>58</sup> Escambia County, discussed *infra*, is one such local government that was forced to revoke a permit.

<sup>59</sup> For example, Mobilitie's actions may implicate Florida law prohibiting and making it a crime to submit false information to a government. Fla. Stat. §837.06, False official statements, provides: "Whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree..." Many counties and municipalities have similar code provisions addressing false information. *See, e.g.* Coral Gables City Code §39-1.

<sup>60</sup> Public Notice, at 17-18.

<sup>61</sup> Public Notice, at 13, citing Mobilitie Petition, at 15.

<sup>62</sup> Communications Services Tax Working Group Report to Hon. Rick Scott, Governor, Hon. Don Gaetz, President of the FL Senate, Hon. Will Weatherford, Speaker of the FL House of Representatives, Feb. 1, 2013.

Based on Mobilitie's actions in Florida and clearly inaccurate assertions in its Petition, it would be inappropriate for the Commission to rely on Mobilitie's Petition to justify preemption and more regulations of local governments. Quite the contrary, the Commission should dismiss Mobilitie's Petition.

#### **IV. Several Specific Florida Governments' Wireless Siting Status And Detailed Official Action With Mobilitie.**

In the Public Notice, the Commission recognized the value of specific information and "systematic data" over anecdotal evidence.<sup>63</sup> This section provides factual information about several Florida local governments' wireless tower and antenna siting status.<sup>64</sup> As demonstrated by such evidence, there do not exist extensive wireless service coverage or capacity issues, even in rural areas of the State. In addition, the Comments include specific local governments' official actions with respect to Mobilitie. Attached to such Comments are copies of Mobilitie's applications, correspondence and submissions, responses from local governments, as well as photographs showing areas where Mobilitie is seeking to install its towers in the rights of way.<sup>65</sup>

##### **A. CITY OF CORAL GABLES**

The City of Coral Gables is a planned community located just southwest of downtown Miami, running along the east coast of Biscayne Bay. Known as "The City Beautiful," Coral Gables features almost entirely Mediterranean Revival architecture and is so named because of its aesthetic use of wide tree-lined avenues, monumental buildings, winding roadways, green space, ornate plazas, and fountains.<sup>66</sup> The City dates back to 1925, established as one of the first planned communities and designed to be an international City which currently hosts more than 20 consulates and foreign government offices and more than 140 multinational corporations.<sup>67</sup> Coral Gables is also home to many properties on the National Register of Historic Places, including a National Historic Landmark - the Biltmore Hotel.<sup>68</sup> The City's diverse economy is comprised of banking, investment institutions, health care, professional services, and high-end shopping and hospitality, and the City serves as the international headquarters for Bacardi and Del Monte Fresh Produce. The University of Miami, a top 50 ranked research university, is located in Coral Gables and serves as the City's largest employer and provider of sports entertainment.<sup>69</sup> With its proximity to Miami International Airport, the Port of Miami, and downtown Miami, Coral Gables continues to be an especially desirable destination for living, business, and leisure.

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<sup>63</sup> Public Notice, at 9.

<sup>64</sup> The following includes specific information from several Florida local governments. If the Commission would like more such examples from other Florida local governments, or has questions about any specific Florida jurisdiction, the Florida Coalition will endeavor to provide such information.

<sup>65</sup> While such information is very voluminous, as the Commission recognized, it is a better practice to provide actual facts pertaining to the industries' experiences with particular jurisdictions than to supply anecdotal information such as the bald inaccurate assertions by Mobilitie. Further, if the Commission desires, the Florida Coalition could provide such information regarding other Florida local governments.

<sup>66</sup> <http://www.coralgables.com/index.aspx?page=3>

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

### Siting Wireless Facilities Generally

Because of the historic nature of much of the City and lush tree-lined residential neighborhoods, the City undertakes efforts to limit utilities and fixtures in its rights of way in various sections of the City.<sup>70</sup> The City historically has steadfastly asserted its zoning code and land use authority over these types of issues. The City was involved in litigation with the electric utility over proposed above-ground utility distribution poles for horizontal attachments and was successful in resolving the issue to have such utility poles installed at lower heights.<sup>71</sup> A communications provider must first attempt to collocate such facilities on existing towers and structures, and there is also a land use hierarchy for siting such facilities.<sup>72</sup> The City Code allows wireless facilities to be sited in the rights of way, pursuant to the processes and regulations set forth in the Zoning Code and other applicable City Code provisions.<sup>73</sup> In addition, the City has adopted a communications ordinance requiring registration prior to communications providers obtaining a permit to place and to maintain communications facilities in the rights of way, consistent with Section 337.401.<sup>74</sup> The City is in the process of reviewing its code to consider revisions to address small cell and DAS facilities in the rights of way.

Wireless siting has occurred in and around the City. There are 421 towers registered within a four-mile radius of City Hall. Heights of towers vary widely but many extend to over 200 feet. In addition, there are 789 antennas sited within such four-mile radius.<sup>75</sup> In addition, the City installed, owns and maintains a public safety cell tower on one of its Fire Station properties, in an area of the City where it would be difficult to site towers or collocate antennas on other structures. Four nationwide CMRS providers have collocated antennas on the tower.

### Experience with Mobilitie

Mobilitie initially filed registration materials with correspondence dated January 19, 2016, and supplemental materials dated February 4, 2016, pursuant to the City's Communications Rights of Way Ordinance.<sup>76</sup> Mobilitie's contractor filed a Permit Application dated February 4, 2016 ("Permit Application"). In a letter dated March 15, 2016, the City notified Mobilitie that it was rejecting its registration because it did not provide a correct Certificate of Insurance and Performance Bond. In addition, the City notified Mobilitie that while Mobilitie indicated that it intended to construct a 75' utility pole in the rights of way, its construction plans revealed that it intended to construct a wireless tower in the right of way and would be required to comply with Article 5, Division 20 of the City's Zoning Code, which sets forth requirements for siting wireless towers and antennas in the City rights of way. The City notified Mobilitie that a permit could not be issued until Mobilitie submitted an application

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<sup>70</sup> In some residential neighborhoods, the City does not install street signs for roadways and instead uses markers on the ground to contain the name of the streets.

<sup>71</sup> See note 36, *supra.*; City of Coral Gables, FL Resolution No. 2016-212, A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF CORAL GABLES, FLORIDA, APPROVING CONDITIONS OF THE PENDING FLORIDA POWER AND LIGHT (FPL) TRANSMISSION LINE PERMIT APPLICATION RELATED TO THE COCONUT GROVE INJECTION PROJECT.

<sup>72</sup> Coral Gables Zoning Code, Section 5-2005 (C) and (D).

<sup>73</sup> Coral Gables Zoning Code, Section 5-2005(S).

<sup>74</sup> Coral Gables City Code, Sections 70-71- 70-86.

<sup>75</sup> <http://www.antennasearch.com/sitestart.asp>.

<sup>76</sup> Attachment A, January 19, 2016 Letter From Cory Mofield, Mobilitie..

pursuant to Section 5-2003 of the Zoning Code, and such application has been approved through the appropriate procedures, in addition to obtaining an effective registration.<sup>77</sup>

Florida Utility Pole Authority responded in a letter dated March 29, 2016, asserting that as a public utility with a CLEC, Mobilitie was entitled to use the City rights of way, but that since it was not providing cellular or mobile services to end users, but “transport services, similar to electric, gas, telephone, and cable providers,” it did not have to comply with the City’s registration requirement or zoning code.<sup>78</sup> Several further correspondence and telephone communications between Mobilitie and the City ensued, in which Mobilitie took various, often inconsistent positions, with respect to the applicability of various federal and Florida laws and the City Code and asserted its rights under the FCC’s “shot clock.” These are summarized in a letter from the City dated June 6, 2016, in which the City rejected Mobilitie’s assertions and indicated that it would have to comply with the registration and Zoning Code requirements.<sup>79</sup> While these communications were occurring, Mobilitie, under the d/b/a name of Florida Utility Pole Authority, submitted other permit applications for various locations including to install a “75’ Concrete Utility Pole” in a certain location, although the construction plans were for a “78’ Wood Pole.”<sup>80</sup> The City rejected Mobilitie’s other permit applications.

Mobilitie then requested to meet with representatives of the City, which the City agreed to do, to discuss Mobilitie’s goals to install small cell facilities in various locations in the City rights of way. The City attempts generally to accommodate its businesses community and would meet with others interested in locating similar facilities within the City. At such meeting, Mobilitie presented the City with materials as to its status and its proposed infrastructure in the City. Mobilitie acknowledged that it was a communications services provider seeking to install wireless communications facilities, notably “towers” as defined under federal and Florida law, and associated equipment in the City rights of way. Mobilitie identified 20 locations in the City where it wanted to install such facilities. One proposed location was for an attachment to an existing light pole, but others were for new towers ranging in height from approximate 26 feet, several at approximately 40-45 feet, three at slightly over 70 feet and one at 120 feet, to be located in commercial and residential areas of the City in the rights of way, often adjacent to single family homes and in areas where there were no above-ground utilities. The proposed 120’ pole was to be located adjacent to single family residential homes and a small park.<sup>81</sup> When asked why Mobilitie did not seek to locate its facilities on existing towers and buildings, which seemed possible for some locations, or to site facilities on private property in a manner that would be less impactful, Mobilitie responded that it did not want to pay rent. It did not identify a technical reason why it could not locate its facilities on existing structures or private property. While the City appreciated Mobilitie’s candor and willingness to work with the City, the City

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<sup>77</sup> Attachment A, March 15, 2016, Letter to Cory Mofield, Mobilitie.

<sup>78</sup> Attachment A, March 29, 2016, Letter from Florida Utility Pole Authority.

<sup>79</sup> Attachment A, June 6, 2016 Letter RE: Mobilitie, LLC d/b/a Florida Utility Pole Authority Registration and Permit Application.

While these communications were occurring, Mobilitie, under the d/b/a name of Florida Utility Pole Authority, submitted other applications for permits to install “Proposed Concrete Pole for Mounting Proposed Lessee Antenna, RRU and Equipment” in a certain locations in the City’s Rights of Way.

<sup>80</sup> Attachment A, Permit Application dated 2/4/16 and site plan.

<sup>81</sup> Attachment A, pictures from some of Mobilitie’s proposed locations. The 120’ proposed tower would be adjacent to single family residential homes, where the Zoning Code does not allow such towers.

staff did not make any commitments with respect to Mobilitie's proposed facilities. There are no pending applications. Dialogue between the City and Mobilitie is continuing.<sup>82</sup>

## **B. CITY OF GAINESVILLE**

The City of Gainesville is the cultural, educational, and commercial center for the north central region of Florida, located on I-75 halfway between Miami and Atlanta.<sup>83</sup> Gainesville is home to Florida's largest and oldest university, the University of Florida. Together with Shands Hospital at UF, the university is the leading employer and economic stimulant in Gainesville.<sup>84</sup> An estimated 129,000 people reside in Gainesville with a median age of twenty-five, largely due to the nearly 50,000 students that attend the University of Florida each year and call Gainesville their temporary home.<sup>85</sup> Gainesville is also known for its old-Florida historic landmarks and expansive surrounding nature preserves. The City owns and operates the regional utility, transit system, 72-par championship golf course, and municipal airport.<sup>86</sup>

### Gainesville Regional Utilities

The City of Gainesville owns and operates its regional electric utility, Gainesville Regional Utilities (GRU). In addition to providing utilities to Gainesville's residents, GRU serves approximately 93,000 retail and wholesale customers in Gainesville and surrounding areas, offering electric, natural gas, water, wastewater, and telecommunications services.<sup>87</sup> GRU is governed by the Gainesville City Commission, in accordance with the City's Charter.<sup>88</sup>

### Siting Wireless Facilities Generally and Access to Public Rights of Way

The Gainesville City Code permits construction of new monopole wireless towers and encourages collocation on existing monopole towers on private property.<sup>89</sup> The Code also provides all application submittal requirements for new wireless communication facilities.<sup>90</sup> In general, Gainesville requires a permit for any entity that obstructs any rights of way or whose actions will temporarily obstruct traffic. These applications are reviewed by the City's public works department and the permit is either issued or denied within five business days.<sup>91</sup>

There do not appear to be issues with wireless coverage and capacity in and around Gainesville. There are 244 registered antenna sites within a four-mile radius of City Hall and 111 towers within such area, of varying heights, including many well over 200 feet.<sup>92</sup>

The City has pole agreements which govern the placement of horizontal pole attachments (fiber optic, coaxial cable and copper wire) to GRU's utility poles in the rights of way poles.

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<sup>82</sup> Attachment A, Letter dated January 4, 2017, to Mobilitie summarizing meeting.

<sup>83</sup> <http://www.cityofgainesville.org/Community/AboutGainesville.aspx>

<sup>84</sup> *Id.*

<sup>85</sup> *Id.*

<sup>86</sup> <http://www.cityofgainesville.org/Community/AboutGainesville/Facts.aspx>

<sup>87</sup> <https://www.gru.com/AboutGru.aspx>

<sup>88</sup> <https://www.gru.com/AboutGRU/OurLeaders/ExecutiveManagement.aspx>

<sup>89</sup> City Code Sec. 30-98.

<sup>90</sup> City Code Sec. 30-98(m).

<sup>91</sup> City Code Sec. 23-38.

<sup>92</sup> <http://www.antennasearch.com/sitestart.asp>. The University owns and operates its own wireless service facilities for service within the University.



GRU has begun the process of working on pole attachment agreements with wireless carriers for collocation of vertical facilities (small cell and DAS) on its utility poles. At this point, GRU has not finalized an agreement with any wireless communications provider or infrastructure entity. Gainesville's code currently does not allow wireless facilities in the rights of way, but the City is currently in the process of reviewing its code to consider possible amendments to allow wireless facilities in the rights of way.

#### Experience with Mobilitie

Mobilitie first filed a Right of Way Permit Application with Gainesville on December 28, 2016, to install a single 72' wood "utility pole" with a top mounted antenna making the facility 75' tall for a location in the rights of way.<sup>93</sup> In its cover letter submitted with the application, Mobilitie described its desire to install small cell facilities, small low-powered wireless equipment which are mounted on either new or existing utility distribution or light poles.<sup>94</sup> Mobilitie's site plan shows that these facilities will be mounted to a new pole of approximately 75' to be sited in a right-of-way within the City's downtown area. In its site plan, Mobilitie included a picture of what appears to be a superimposed image of a small piece of one proposed pole.<sup>95</sup> The superimposed image, labeled "Proposed Utility Pole," fades out after roughly two feet, so that the depicted utility pole is a quarter of the size of nearby street signs. However, in the pole elevation schematic, it is revealed that the proposed pole is actually over 75 feet tall. In June 2016, Mobilitie previously submitted similar Right of Way Permit Applications to install similar poles in other locations within the City rights of way.<sup>96</sup> Pictures of where Mobilitie seeks to install two 75' poles and one 42' pole show that such facilities would interfere with others' use of the rights of way, including the travelling public, not blend into the environment, would be located in some areas where all utilities are underground, and would be much taller than anything in the vicinity.<sup>97</sup>

In an email dated July 7, 2016, the City notified Mobilitie that its June 2016 Applications were incomplete setting forth the specific deficiencies. In a letter dated January 12, 2017, the City notified Mobilitie that its December 2016 Application was also incomplete because Mobilitie did not demonstrate that it completed a registration to access the rights of way, as required by Article VI, chapter 23 of the City Code (the communications rights of way ordinance), and that there were other deficiencies with its Application. As noted, Mobilitie did not include its PSC certificate, certificate of insurance, and contractor information. In addition, Mobilitie indicated it would connect to an existing electric transformer, but did not obtain approval from the electric utility for such connection and may need an electrical permit prior to approval of its right of way permit. Further, the City notified Mobilitie that its proposed "pole" appeared not to satisfy the City's land use code, which the City indicated was in the process of being reviewed for possible revisions.<sup>98</sup> Mobilitie did not complete a registration nor provide the information that was missing from its Application. However, Mobilitie responded with an 8-page letter from Chris Brown, Government Relations Consultant ("CBrown Letter") dated

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<sup>93</sup> See Attachment B – Right-of-Way Permit Application

<sup>94</sup> See Attachment B – Application Cover Letter, dated December 28, 2016

<sup>95</sup> See Attachment B – Site Plan, pages 2-3

<sup>96</sup> See Attachment B – Permit Application dated June 22, 2016

<sup>97</sup> See Attachment B – pictures of areas where Mobilitie seeks to install poles.

<sup>98</sup> See Attachment B – Letter dated January 12, 2017, to Mobilitie.

January 16, 2016(sic) to the City discussing Mobilitie's CLEC registration, its purported legal authority to use the rights of way and the City's legal authority, under state and federal law.<sup>99</sup> The City is continuing to analyze the issues raised in the CBrown Letter and to date, no further information has been submitted by Mobilitie.

### C. TOWN OF GULF STREAM

The Town of Gulf Stream is a small planned community located on the barrier island of Florida's southeast coast, half way between Boca Raton and West Palm Beach. The Town is home to just under 1,000 residents with a median age of 58 years.<sup>100</sup> Gulf Stream is exclusively a residential and recreational town.<sup>101</sup> The Town has its own school, the Gulf Stream School founded in 1938, which offers private, quality education to up to 250 students from pre-Kindergarten to the 8<sup>th</sup> Grade.<sup>102</sup> As embodied on the Town's crest, Gulf Stream is well known for its exceptional golfing and nearly century long history of hosting polo games and tournaments as home to one of the most prominent polo clubs, the Gulfstream Polo Club.<sup>103</sup>

#### Siting Wireless Facilities Generally and Commitment to Improving Communications

Installation of cell towers and wireless communications antennas in Gulf Stream is permitted within Town owned property, provided the proposed facilities satisfy the Town Code, the Town's zoning regulations, and are approved by the Town Council.<sup>104</sup> Currently, there is an abundance of wireless coverage and capacity within the .8 square miles of Gulf Stream's limits. Within a 4 mile radius of the center of Town, there are 13 registered towers typically over 200 feet in height, and 30 unregistered towers typically between 100 and 200 feet in height.<sup>105</sup> Heights of such towers vary widely but extend up to 400 feet. There are over 260 antennas sited within this area on towers, buildings, and other structures. The Town is unaware of any areas within the Town that have gaps in wireless coverage or issues with capacity. Despite the abundance of coverage for its under 1,000 residents, the Town is consistently committed to expanding and improving communications capabilities. This is evidenced by Gulf Stream's now five year effort to improve utility stability, safety, aesthetics and reliability for its residents by undergrounding the Town's entire utilities system, including telecommunications facilities.<sup>106</sup>

In 2012, after growing concerns from residents on the number of service interruptions with the Town's overhead utilities system, **nearly** two-thirds of Town voters approved a referendum to place all of its power, cable television, and telecommunications facilities underground at the cost of over \$6.5 million.<sup>107</sup> The Town has begun the implementation of this massive undergrounding effort, having hired engineers to oversee the project and contractors to

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<sup>99</sup> See Attachment B – Letter dated January 16, 2016, from Chris Brown of Mobilitie to City Manager.

<sup>100</sup> <http://www.gulf-stream.org/>

<sup>101</sup> <http://www.gulf-stream.org/about/>

<sup>102</sup> <http://www.gulf-stream.org/galleries/gulf-stream-school/>

<sup>103</sup> [https://en.wikipedia.org/wiki/Gulfstream\\_Polo\\_Club](https://en.wikipedia.org/wiki/Gulfstream_Polo_Club)

<sup>104</sup> Town Code §66-456

<sup>105</sup> <http://www.antennasearch.com/sitestart.asp>

<sup>106</sup> As a barrier island, coastal area in Florida, Gulf Stream is subject to high-wind thunderstorms and occasionally experiences hurricanes and tropical storms. An underground utilities system provides the Town with a safer, more reliable system.

<sup>107</sup> <http://www.palmbeachdailynews.com/news/local-govt--politics/undergrounding-other-barrier-island-communities-cite-reliability/dYQR2MpNm9SLG8lQtWqhaJ/>

install underground conduits that would be used by the electric, cable and telecommunications utilities in the rights of way. The Town has finalized costs with the electric utility, cable and telecommunications utilities and completed many phases of the undergrounding project. In furtherance of Gulf Stream's efforts to place and maintain the Town's entire utilities system underground, the Town Code was amended to require any and all facilities providing electrical power, telecommunications, video, cable television, internet, broadband, and all similar services to be placed exclusively underground.<sup>108</sup>

#### Access to Public Rights of Way

Regarding use of the public rights of way, wireless communications antennas are permitted on existing towers or light pole structures located in rights of way or easements within the Town, subject to size and design conditions.<sup>109</sup> However, there is no provision of the Town Code to allow the siting of new towers to support wireless antennas in the rights of way within the Town. As stated above, siting a new tower to support wireless communications antennas may be permitted on Town-owned property, but not within rights of way.

#### Experience with Mobilitie

Mobilitie first approached the Town with a letter dated August 3, 2016, requesting a preliminary review of Mobilitie's application and site plan to construct a new utility infrastructure facility and requesting that the Town provide Mobilitie with all requirements needed to obtain a right of way permit for the installation of the proposed wireless facility.<sup>110</sup> Mobilitie indicated in the letter that it planned to construct the wireless facility within the next twelve months.<sup>111</sup> Mobilitie's "Right of Way Utilization Application" that it included with the letter, describes the proposed project as simply attaching "backhaul transport equipment to an existing concrete light pole within an existing right of way." In the Jurisdiction's Information section of the Application, Mobilitie indicated that the jurisdiction was the "City of Hialeah" although the address was completed with Gulf Stream's address, and in the Site Information section of the Application, Mobilitie inserted that the city was "Delray Beach" as opposed to Gulf Stream.<sup>112</sup> Mobilitie never explained nor corrected these errors.

In the site plan submitted with the Application, Mobilitie's site plan titled "Site Id: 9FLB004271/M190XSR44B, Gulfstream RD & Old School RD, Delray Beach, FL 33483" but showed a location with Gulf Stream. This same mistake with respect to the jurisdiction occurs on all pages of the Site Plan. As part of the Site Plan, Mobilitie included a picture of a three to four foot pole placed in a cone and resting on a circular pad at the proposed siting location.<sup>113</sup> The pole is identified as "Proposed Concrete Utility Pole." However, in the pole elevation schematic, it is revealed that the proposed concrete utility pole is actually over 75 feet tall with a top mounted antenna, and would constitute a new cell tower under federal and state law.<sup>114</sup> The

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<sup>108</sup> Town Code §34-103; This requirement does not apply to facilities necessary for temporary restoration of service under emergency conditions, such as a hurricane or similar natural event that damages overhead utility facilities.

<sup>109</sup> Town Code §66-456

<sup>110</sup> See Attachment C – Mobilitie Letter to The Town of Gulf Stream, dated August 3, 2016

<sup>111</sup> *Id.*

<sup>112</sup> See Attachment C – Mobilitie Right of Way Utilization Application, dated August 3, 2016. Hialeah is a separate municipality within Miami Dade County and Delray Beach is a separate municipality in Palm Beach County.

<sup>113</sup> See Attachment C – Site Plan, page 2

<sup>114</sup> See Attachment C – Site Plan, page 3

plan shows that the large concrete pole is to be installed directly in front of the Gulf Stream School along Gulfstream Road, and will include a warning sign that reads, “Notice – Stay Back – Radio-frequency energy may exceed exposure limits.”<sup>115</sup> It should be noted that this area of Gulfstream Road is designated as an historic and scenic highway.<sup>116</sup>

On October 11, 2016, the Town Attorney replied to Mobilitie’s letter and Application, denying Mobilitie’s Application pursuant to the Code provisions requiring all utility facilities to be placed underground and prohibiting the siting of wireless facilities in the Town’s rights of way.<sup>117</sup> In addition to the restrictions prescribed by the Town Code, it would be unreasonable to expect Gulf Stream to issue a permit for a 75 foot tower in front of its only school on an historic and scenic road, after Gulf Stream’s residents approved and the Town has begun spending \$6.5 million to place all utilities in the rights of way underground. To date, Mobilitie has not submitted anything further for the Town’s consideration.

#### **D. CITY OF TALLAHASSEE**

The City of Tallahassee has been the State’s capital since 1824, located in the Florida Panhandle halfway between St. Augustine and Pensacola.<sup>118</sup> Home to the Florida State Capital Building, Supreme Court of Florida, Florida Governor’s Mansion, nearly 30 state agencies, and a large number of trade/professional associations, Tallahassee is at its busiest each spring during the legislative session when lawmakers determine the state’s business agenda and budget.<sup>119</sup> Tallahassee is also home to two large and historic universities, Florida State University and Florida A&M University. An estimated 190,000 people reside in Tallahassee with a student population exceeding 70,000.<sup>120</sup> The City owns and operates the local electric utility, which is vertically integrated to provide generation, transmission, and distribution operations.<sup>121</sup>

#### **Siting Wireless Facilities Generally and Access to Public Rights of Way**

The City of Tallahassee is very supportive of expanding communications capabilities and is currently engaged in implementing a “digital canopy” throughout the City that would facilitate wireless communications in various public spaces, such as firehouses, parks, and the airport. Within just a 4 mile radius of City Hall, there are 52 registered towers typically over 200 feet in height and 80 unregistered towers typically between 100 and 200 feet in height.<sup>122</sup> Heights of such towers vary widely but extend up to over 600 feet. There are over 714 antennas sited within this area on towers, buildings, and other structures. The City is unaware of any areas within the City that have gaps in wireless coverage or significant issues with capacity, other than

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<sup>115</sup> See Attachment C – Site Plan, pages 1, 9

<sup>116</sup> In 1916, the State of Florida began to open a stretch of roadway along the Atlantic Ocean coastline, as a more scenic alternative to Route 1, now called the Federal Highway. The road eventually became known as State Road A1A and runs parallel to the Ocean. To address high winds along the route, Australian Pines were planted along both sides of A1A, from Jacksonville to Miami. The Town of Gulf Stream is the only remaining stretch where the Australian Pine Canopy still remains. Thus, it has since been designated as an historic and scenic highway, allowing the Town to protect and cultivate new plants to maintain and expand a stand of more than 300 pines. <http://www.gulf-stream.org/about/>

<sup>117</sup> See Attachment C – Letter from John C. Randolph, Esq., dated October 11, 2016.

<sup>118</sup> <http://www.visittallahassee.com/about-tallahassee/#government-3>

<sup>119</sup> *Id.*

<sup>120</sup> <https://www.census.gov/quickfacts/table/PST045214/1270600/embed/accessible>

<sup>121</sup> <https://www.talgov.com/you/you-learn-utilities-electric-index.aspx>

<sup>122</sup> <http://www.antennasearch.com/sitestart.asp>

very minor service gaps due to the height of certain buildings in the downtown area and building penetration issues including at the FSU Stadium and Governor's Square Mall.

The City owns and operates the 4<sup>th</sup> largest municipal electric utility in Florida and 22<sup>nd</sup> largest in the United States.<sup>123</sup> Tallahassee owns the utility poles throughout the City, although the City does not own or operate a communications utility. The City has allowed for horizontal attachments (wireline) to its utility poles, but has not allowed the attachment of wireless facilities. Undergrounding of utilities and telecommunications facilities is not required, but is strongly encouraged by the City in new developments or major redevelopments. Tallahassee has engaged in several recent initiatives to convert above-ground utilities to underground. The City encourages where electric facilities are already underground, all other utilities follow suit and place facilities underground, in an effort to limit the above-ground facilities in the rights of way.

The City General Code of Ordinances does not currently allow, and thus prohibits, the siting of wireless communications towers in the rights of way. The City is exploring updating the City General Code to permit placement of wireless facilities on existing utility poles, subject to reasonable regulations. The City is also in the process of developing a set of technical requirements for DAS and small cell facilities in the rights of way as well as on City-owned structures. Tallahassee has great concern for the safety, aesthetics, and overcrowding issues that would arise from allowing new poles and wireless facilities in the rights of way without reasonable spacing, height, stealth, and other similar regulations.

#### Experience with Mobilitie

In mid-2016, Mobilitie submitted requests without completed applications to the City to install "utility poles" in various locations of the rights of way, ranging in height from approximately 25 to 75 feet, not including top mounted antennas.<sup>124</sup> The City's staff reviewed the construction plans and realized that they were not for utility poles. At that time, the permitting staff alerted the City Attorney's office, which began looking further into Mobilitie's submissions. The City determined that the requests were to install wireless communications facilities in the rights of way. In a letter dated December 13, 2016, the City notified Mobilitie d/b/a FL Network Transport, LLC, that the City would not be proceeding with further review of the submittals and that the City would be engaging in a review of its existing codes to determine whether to amend such codes to allow wireless facilities within the City's rights of way.<sup>125</sup> The City is currently engaged in this review and possible amendment process. Mobilitie has not submitted any additional applications or requests.

#### **E. CITY OF TAMPA**

The City of Tampa is the third most populous city in Florida and the fifty-third most populous city in the United States, with an estimated 369,000 residents.<sup>126</sup> It is located on the west coast of Florida, situated in the center of Tampa Bay along Florida's Gulf Coast. Tampa's economy is founded on a diverse base that includes tourism, agriculture, construction, finance,

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<sup>123</sup> <https://www.talgov.com/you/you-learn-utilities-electric-index.aspx>

<sup>124</sup> See Attachment D – Submittals with construction plans

<sup>125</sup> See Attachment D – Letter dated December 13, 2016 to Submissions to the City of Tallahassee Letter, dated December 13, 2016

<sup>126</sup> <http://www.census.gov/quickfacts/table/PST045216/1271000#flag-js-NA>

health care, government, technology, and the port of Tampa.<sup>127</sup> Tampa hosts several large corporations' regional offices, with Fortune 1000 companies such as Raymond James Financial, WellCare, and OSI Restaurant Partners headquartered in the metropolitan area.<sup>128</sup> Tampa is also home to MacDill Air Force Base, which is a significant contributor to the City's economy, the headquarters for United States Central Command and Special Operations Command, and home to approximately 15,000 active military personnel and their families.<sup>129</sup>

#### Siting Wireless Facilities Generally

The City of Tampa has been very supportive of expanding communications capabilities, reviews applications promptly and has granted thousands of permits. The City strives to foster the improvement of the communications capabilities for its citizens, businesses and its own governmental needs, while at the same time addressing public safety, historic interests, economic development, land use, and aesthetic concerns of the City's residents and visitors. Cell towers are a permitted use provided they satisfy the City's zoning regulations. If an applicant seeks a variance from the City's zoning regulations, it may apply for a special use permit which is reviewed by the City Council. Wireless facilities siting has been exceptionally prolific within Tampa, both with respect to towers and collocation. Wireless infrastructure is allowed on commercial buildings and the City has leased numerous properties for the installation of wireless infrastructure for both service providers and infrastructure real estate companies to lease space to providers. Within just a 4 mile radius of Tampa's engineering building, there are 67 registered towers typically over 200 feet in height, 293 unregistered towers typically between 100 and 200 feet in height and currently four new tower applications.<sup>130</sup> Heights of such towers vary widely and extend up to 500 feet. There are over 860 antennas sited within this area on towers, buildings and other structures.<sup>131</sup> The City does not allow wireless communications attachments on traffic signal poles because of the engineering and public safety concerns.<sup>132</sup> Because of the extremely large number of wireless facilities that exist on public and private property, there is excellent wireless coverage and capacity throughout the City. In addition to wireless facilities for personal wireless services, cable and communications providers within Tampa have enabled Wi-Fi on their systems. It is reported that there are over 190 free Wi-Fi hotspots within Tampa and thousands of Wi-Fi hotspots for subscribers of such services.<sup>133</sup> The City is unaware of any areas within the City that have wireless gaps or significant issues with capacity. Tampa has never been sued by an applicant for approval of a wireless facility.

#### Access to Public Rights of Way

Regarding use of the public rights of way, Tampa allows both pass through providers and communication companies providing services within the City to install facilities in the City's rights of way. While the Tampa City Code §22-332(1) requires all communication facilities to

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<sup>127</sup> <https://www.tampagov.net/about-us>

<sup>128</sup> [https://en.wikipedia.org/wiki/Tampa,\\_Florida](https://en.wikipedia.org/wiki/Tampa,_Florida)

<sup>129</sup> [https://en.wikipedia.org/wiki/MacDill\\_Air\\_Force\\_Base](https://en.wikipedia.org/wiki/MacDill_Air_Force_Base)

<sup>130</sup> <http://www.antennasearch.com/sitestart.asp>

<sup>131</sup> *Id.* It should be noted that a 4-mile search radius area does not represent the entire area of Tampa, which extends well beyond a 4-mile radius from this location.

<sup>132</sup> The extra mass of such facilities will make existing traffic signal poles become out of compliance with hurricane wind load requirements, requiring the entire signal pole to be replaced.

<sup>133</sup> Of course, sports stadiums and other large facilities may have issues during such events, but those property owners can take steps to accommodate the large number of wireless users during such events.

be placed underground, §22-332(2) does provide for the City to allow the installation of poles in the rights of way for communication facilities after approval by the City.<sup>134</sup>

As expected of a very large, urban metropolitan area that processes thousands of development applications at any given time, Tampa has committed extensive capital and resources to employing and maintaining a sophisticated technology system to handle the workload in a manner that addresses the concerns and satisfies applicants for development orders. The approval process for placement of communications facilities in the rights of way is fair, accessible, and expedient. All registration and permit applications may be completed fully online through the City's software system. Once plans for traffic maintenance, construction, and a certificate of insurance are uploaded, the application is sent out for review by the City's internal departments. The initial review period is ten working days, and if any revisions are requested by the City, the applicant is notified immediately through the software and may address the revisions required. If necessary, a second review period of the revisions submitted by the applicant is completed within another ten working days. Once all of the necessary departments have approved the application within such time periods, the applicant is notified and is required to upload a 48 hour notice of the installation days and times. Once the 48 hour notice is received by the City, the City issues the permit. Then once the work is completed, a notice of completion is required to be uploaded by the applicant. Upon receipt of the notice of completion, the final inspection is performed by the City, and once it passes, the permit is closed. An applicant that is organized and has the information needed by the City to process the application, can go from uploading the application to issuance of a permit in less than 60 days.

#### Experience with Mobilitie

Mobilitie first approached Tampa in May 2015 with an "example" set of engineering plans to install DAS facilities on existing electric utility poles throughout the City.<sup>135</sup> Mobilitie did not disclose whether it had a pole attachment agreement with the electric utility and how such installations of its wireless facilities at the top of such poles, above the communications zone, would be accomplished. Mobilitie did not file an application. After representatives from Tampa's Transportation and Stormwater Services contacted Mobilitie about the proposed project, in August 2015, an NRE Specialist for Mobilitie explained that Mobilitie changed its plans and instead was interested in installing 175 "poles" and small-cell sites across the City in the rights of way. At that time, Mobilitie was unable to identify the specific locations and did not submit an application.

In May 2016, Mobilitie provided plans to Tampa staff for "poles" and small-cell sites across the City. Most of these poles, which were actually cell towers under state and federal law and Tampa Code, were between 75 and 80 feet in height. Tampa's staff informed Mobilitie that the plans for such poles showed that such sites would not meet the reasonable height requirements, clear zone requirements, tree conflicts, and location criteria set forth in the City Code. Mobilitie subsequently withdrew its request that the City consider those plans.

In January 2017, Mobilitie submitted a spreadsheet reflecting seven site locations for proposed towers of approximately 35' in height at various locations in the public rights of

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<sup>134</sup> Tampa City Code § 22-332.

<sup>135</sup> See Attachment E - Example Construction Plans

way.<sup>136</sup> Mobilitie requested comments from the City to make proper adjustments to the construction drawings that would be submitted with a new application. The City responded promptly with the requested feedback.<sup>137</sup> To date, Mobilitie has not submitted an application. Mobilitie also has not submitted the registration required by City Code as a condition to place and maintain communications facilities in the rights of way. Because of Florida law with respect to permit fees for use of the rights of way, Mobilitie has not paid any permitting fees to Tampa. Tampa staff has expended hundreds of staff hours in meetings and communications with Mobilitie and in reviewing Mobilitie's various submissions.

## **F. ESCAMBIA COUNTY**

Escambia County is the westernmost county in the state, located in the Florida Panhandle and comprised of the City of Pensacola and the Town of Century. Just over 300,000 people reside within the 875 square miles comprising the County limits.<sup>138</sup> The County adheres to its developed standard operating procedures in reviewing and granting permits for installation of facilities in County rights of way.<sup>139</sup> Escambia County has not identified, nor has it been alerted to, any issues or concerns with lack of telecommunication coverage or capacity in the County for residents and business. The County is, however, concerned with liability related to drivers and pedestrians hitting obstructions in the rights of way.

### **Experience with Mobilitie**

Mobilitie first approached Escambia County with eight right of way permit applications<sup>140</sup> to site identical 120 foot utility poles<sup>141</sup> in various County rights of way locations throughout the County. In early 2016, several of these permits were granted to Mobilitie after review of the applications and plans by the County. However, after further review of Mobilitie's applications and plans, it was discovered that Mobilitie had misrepresented the nature of their proposed telecommunications facilities to the County. Mobilitie's applications appeared to be for common utility poles, such as those used by Gulf Power, and thus the permits were issued. Instead, it subsequently became clear that Mobilitie intended to construct more elaborate monopoles for telecommunication antennas of the type that have not been previously permitted in the County's rights of way and are not contemplated in the County's ordinances and policies. The County therefore revoked the permits previously granted to Mobilitie.<sup>142</sup> In addition, unbeknownst to Escambia County, Mobilitie used its subsidiary, Interstate Transport and Broadband, LLC (ITB), to apply for the right of way permits and represented to the County that ITB was the utility registered with the PSC. Upon a search of registrations with the PSC, the County could not find ITB as a name registered with the PSC or authorized by the Secretary of State to conduct business in Florida. The County was eventually able to conclude that ITB was also operating in the State of Florida as FL Network Transport, LLC (FNT) and that while FNT had applied to the PSC for designation as a public utility, the application had not yet been processed. Thus, neither ITB nor FNT were authorized as public utilities in Florida. Mobilitie

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<sup>136</sup> See Attachment F - Mobilitie Spreadsheet

<sup>137</sup> *Id.*

<sup>138</sup> <https://www.census.gov/quickfacts/table/PST045215/12033>

<sup>139</sup> See Attachment F – Standard Operating Procedures for Right-of-Way Permitting in Escambia County

<sup>140</sup> See Attachment F – Site Plans submitted with right-of-way applications

<sup>141</sup> Mobilitie's Site Plans submitted with each application are identical other than the proposed siting location maps and aerial images of those proposed locations.

<sup>142</sup> See Attachment F – Permit Revocation Letter, dated June 16, 2016



later clarified that both ITB and FNT are wholly owned subsidiaries of Mobilitie and that Mobilitie is certified with the PSC as a regulated telephone utility and communications service provider of Alternative Access Vendor services.<sup>143</sup> To date, no further applications have been submitted to the County by Mobilitie, ITB, or FNT.

#### **G. CITY OF WINTER HAVEN**

The City of Winter Haven is a relatively large city in Polk County, located about midway between Tampa and Orlando. Polk County is generally a rural area and is roughly the size of the State of Rhode Island. Just under 38,000 people reside in Winter Haven.<sup>144</sup> Nicknamed “The Chain of Lakes City,” Winter Haven has 50 lakes within the City limits, including two chains of lakes which respectively feature nine and sixteen interconnected lakes.<sup>145</sup> The City is home to the very first Publix supermarket, opened in 1930, and LEGOLAND Florida, a state-of-the-art, world-class theme park. Residents and visitors alike enjoy boating, fishing, hiking, biking, and watching shows at the Theatre Winter Haven.

#### **Broadband Services, Siting Wireless Facilities Generally and Access to Rights of Way**

Despite the rural nature of the area, Winter Haven is committed to expanding and improving communications capabilities and is unaware of any areas within the City that have gaps in wireless coverage or significant issues with capacity. The City is participating in a county-wide initiative known as “Broadband Polk” to ensure that every individual, corporation, non-profit, visitor, government entity and community partner has access to affordable high-speed broadband.<sup>146</sup> Within just a 4 mile radius of Winter Haven’s City Hall, there are 23 registered towers typically over 200 feet in height, and 51 unregistered towers typically between 100 and 200 feet in height.<sup>147</sup> Heights of such towers vary widely but extend up to 391 feet. There are 300 antennas sited within this area on towers, buildings, and other structures. The City Code permits siting of new communication towers, subject to special approval, in areas designated as commercial, industrial, or institutional in the future land use element of the City’s comprehensive plan.<sup>148</sup> The Code also encourages collocation of facilities on one of the many existing towers or other structures to minimize the number of towers within the City.<sup>149</sup>

#### **Experience with Mobilitie**

Mobilitie approached the City with six right-of-way use permit applications, submitted on June 9, 2016.<sup>150</sup> The applications sought approval from the City to site six new facilities in existing City rights-of-way and included corresponding site plans and photo simulations for each proposed location and facility.<sup>151</sup> However, there were inconsistencies between Mobilitie’s applications and their corresponding site plans that created confusion as to what facilities Mobilitie was actually seeking to install. Mobilitie applied for rights of way permits to site four new poles upon which antennas would be attached, ranging from 75 feet to 120 feet in height.

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<sup>143</sup> See Attachment F – Amendment of Applicant Name Letter, dated July 14, 2016

<sup>144</sup> <https://www.census.gov/quickfacts/table/PST045216/1278275>

<sup>145</sup> [https://en.wikipedia.org/wiki/Winter\\_Haven,\\_Florida#Lakes](https://en.wikipedia.org/wiki/Winter_Haven,_Florida#Lakes)

<sup>146</sup> [http://www.cfrpc.org/download/publications/Polk\\_County\\_Broadband\\_Plan.pdf](http://www.cfrpc.org/download/publications/Polk_County_Broadband_Plan.pdf).

<sup>147</sup> <http://www.antennasearch.com/sitestart.asp>

<sup>148</sup> Winter Haven Code of Ordinances Sec. 21-235

<sup>149</sup> Winter Haven Code of Ordinances Sec. 21-234

<sup>150</sup> See Attachment G – Mobilitie Cover Letter to Right-of-Way Permit Applications

<sup>151</sup> See Attachment G – Site Plans

Two of the rights of way permit applications requested installation of “equipment on a new pole within an existing ROW,” where the scope of work was described as installing “a new pole with proposed backhaul transport equipment.”<sup>152</sup> Inexplicably, however, the corresponding site plans repeatedly reference installing proposed antennas on existing utility/street light poles in existing rights of way. To date, Mobilitie has not explained this discrepancy. In addition, the Right of Way Use Permit Applications were submitted by Mobilitie, however, the construction plans accompanying such applications were submitted under the name “FL Network Transport, LLC” without an explanation as to the relationship. Mobilitie stated that it plans to construct the applied for facilities within the next 18 months.<sup>153</sup>

On October 6, 2016, the City staff responded to Mobilitie’s applications after careful research and review.<sup>154</sup> It was determined that the four submitted applications for new poles with antennas failed to comply with one or more requirements contained in the City Code.<sup>155</sup> It was explained that the proposed poles were communications towers pursuant to the City Code and were not allowed in the proposed locations. One of the applications for a presumed collocation of facilities on an existing utility pole was determined to be proposed for a location within a rights of way controlled by FDOT, and the City referred Mobilitie to FDOT. The other application for a presumed collocation of facilities on an existing utility pole owned by the electric utility was determined to be within the City’s jurisdiction, but the City requested further information and clarification as to the utility’s consent, and whether the proposed antenna would be mounted on an existing utility pole or whether it would be mounted to a new pole. In addition, the City pointed out technical defects with all of the applications that would need to be corrected by Mobilitie. Following such correspondence, the City staff engaged in further communications with Mobilitie.

On December 28, 2016, Mobilitie responded to the City’s request that Mobilitie explain its legal right to occupy the City’s rights of way with an 8-page letter from Chris Brown, Government Relations Consultant (“CBrown Letter”) discussing Mobilitie’s CLEC registration and its regulation by the Florida Public Service Commission, its purported legal authority to use the rights of way and the City’s legal authority, under state and federal law.<sup>156</sup> While the City continues to analyze the issues raised in the CBrown Letter, to date, no further information has been submitted by Mobilitie or FL Network Transport LLC with respect to the previously submitted applications.

## **V. Conclusion**

The Florida Coalition appreciates the opportunity to submit these Comments. The Florida Coalition shares the Commission’s goal of ensuring that residents, visitors, businesses and governments enjoy the benefit of advanced communications services and that regulatory policies support such advances in technology. The concerns raised in the Public Notice, and certainly Mobilitie’s claims that local governments are hindering such goals, are not well founded.

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<sup>152</sup> See Attachment G – Applications 9FLB004612 and 9FLB004615

<sup>153</sup> See Attachment G – Mobilitie Cover Letter to Right-of-Way Permit Applications

<sup>154</sup> See Attachment G – City Growth Management Reply Letter, dated October 6, 2016

<sup>155</sup> Specifically, Winter Haven Code of Ordinances Sec. 21-235

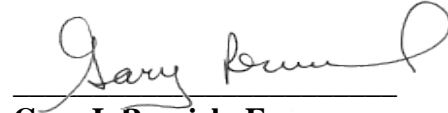
<sup>156</sup> See Attachment G– Letter, dated December 28, 2016 from Chris Brown of Mobilitie to Interim City Manager.

Mobilitie's assertions regarding inappropriate fees, inconsistent terms, and lack of transparency certainly do not hold true for Florida's local governments, where all such regulations are established by State Statute and must be adopted by local Ordinances.

However, there are important interest to balance with respect to federal and state regulation of local governments' processing applications for wireless siting, particularly with respect to rights of way since such facilities can have significant adverse impacts to nearby properties and other users of the rights of way. Neither federal nor Florida law guarantees that every wireless communications provider and infrastructure real estate company will be entitled to locate any facilities wherever it wants. While every application needs to be reviewed on its merits, it may very well be that Mobilitie's proposed 80'-120' towers are not suited for many of its desired locations in the rights of way. Local governments are best suited to make these decisions. Similarly while many local governments may be reviewing voluntarily their codes to address advanced technology and new requests for access to the rights of way, that does not signal the need for more federal regulation. The Florida Coalition submits that it would be impossible for the FCC to address all the nuances of the various States' laws with respect to local control of the rights of way. Inappropriate preemption or regulation may have negative consequences not contemplated by the Commission. Further, these same issues are being considered currently at the State legislative level, where it may be more appropriate to determine the various policy questions and allow the stakeholders to work together on appropriate solutions. The Florida Coalition urges the Commission to refrain from adopting more regulations on processing applications and regulating use of rights of way for wireless infrastructure.

**Respectfully submitted,**

**FLORIDA COALITION OF  
LOCAL GOVERNMENTS**

A handwritten signature in black ink, appearing to read "Gary Resnick", is written over a horizontal line.

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